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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 13th February 1956

**S.R.O. 442.**—Whereas the election of Shri Balu son of Shri Mangla, village Bhodia Khera-Pachadgan, P.O. Fatehabad, District Hissar and Shri Mani Ram son of Shri Harji, village Banmadori, P.O. Bhattu Kalan, District Hissar, as members of the Legislative Assembly of the State of Punjab, from the Fatehabad constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Dalbir Singh son of Kani Ram Chamar, village Parbhawala, Tehsil and District Hissar;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 5 OF 1954

Shri Dalbir Singh s/o Kani Ram, Chamar of village Parbhawala, Tehsil Hissar, District Hissar—*Petitioner.*

*versus*

- (1) Shri Balu Ram s/o Mangla, Chamar of village Bhodia Khera Pachadgan, P.O. and Tehsil Fatehabad, District Hissar (Returned Candidate)—*Respondent No. 1.*
- (2) Shri Mani Ram s/o Harji, Jat of village Ban Madori, P.S. Bhattu Kalan, Tehsil Fatehabad, District Hissar (Returned Candidate)—*Respondent No. 2.*
- (3) Shri Chhabil Das s/o Udmi Ram, Dhanak of village Jakhod Khera, Tehsil and District Hissar (Defeated Candidate)—*Respondent No. 3.*
- (4) Shri Het Ram s/o Jwana, Chamar of village Kirnhan, Tehsil Fatehabad, District Hissar—*Respondent No. 4.*
- (5) Shri Ganga Ram s/o Khiyali Ram, Jat of village Gilla Khera, Tehsil Fatehabad, District Hissar (Defeated Candidate)—*Respondent No. 5.*
- (6) Shri Ram Partap s/o Chetan Ram, Bishnoi of village Saddalpur, Tehsil Fatehabad, District Hissar—*Respondent No. 6.*

## JUDGMENT

This election petition relates to the bye-election in the two Member's Fatehabad Constituency of the Punjab Legislative Assembly held in December 1953.

2. The General Elections were held in 1951-52 and for this seat in this double Member Constituency there were eleven candidates including Shri Dalbir Singh (petitioner), Shri Ganga Ram (Respondent No. 5), Shri Mani Ram (Respondent No. 2) and Shri Mani Ram s/o Ch. Ramjas, Bishnoi of village Badopal, Tehsil and District Hissar (P.W. 1). Both Shri Dalbir Singh and Ch. Ganga Ram were given the Congress ticket and they came out successful in the election. Shri Mani Ram s/o Ch. Ramjas above mentioned (P.W. 1), filed an Election Petition against their election which was accepted, consequently leading to the bye-election in December 1953, in which the petitioner Shri Dalbir Singh and Shri Ganga Ram, Respondent No. 5 were holding the Congress ticket. They were defeated and Shri Dalbir Singh petitioner by means of the present petition calls in question the Election for the two seats (one reserved for the Scheduled Castes) in this two Member's Fatehabad Constituency of the Punjab Legislative Assembly, claiming that the election for the aforesaid Constituency is void as a whole, and that Shri Balu Ram, Respondent No. 1 and Shri Mani Ram Bagri, Respondent No. 2, are not validly elected as members from this constituency and that their election is void under sections 81 and 84 of the Representation of People Act, 1951, read with Rule 119 of the Representation of People Rules, 1951.

3. The petitioner alleges, that in this bye-election the nomination papers on behalf of the petitioner and the six respondents were filed on 4th November, 1953 before S. Udharn Singh, Additional District Magistrate, Hissar, who was the Returning Officer for the Constituency. The petitioner and Respondents Nos. 1, 3 and 4 were candidates for the seat reserved for Scheduled Castes as well, while Respondents Nos. 2, 5 and 6 were candidates for the remaining seat only. The Returning Officer after scrutiny accepted all the seven nomination papers, but Respondents Nos. 4 and 6 withdrew their candidature within the prescribed time.

4. The poll was held for the petitioner and Respondents Nos. 1 to 3 and 5 on 13th December, 1953, whereas for Dharsool Polling Station the repoll took place on 18th December, 1953, and after completion of counting of votes polled, the Returning Officer declared Respondent No. 1 duly elected to the seat reserved for Scheduled Castes and Respondent No. 2 for the remaining seat. The declaration of the result was published in the Punjab Government Gazette Extraordinary of 22nd December, 1953, giving rise to the exercise of his right to file this petition by the petitioner who besides being a candidate is also entered as an elector in this constituency in the Electoral Roll.

5. The ground for challenging the election are, that the election is wholly void, because it has not been a free election on account of coercion, in the form of sitting Dharna by huge Panchayats of tenants in Malguzari villages, for compelling unwilling tenant voters to vote for Parja Socialist Party (whose nominees the returned candidates Respondents Nos. 1 and 2 were) was resorted to on an extensive scale and that the Returning Officer S. Udharn Singh improperly accepted the nomination paper of Respondent No. 1, because Shri Balu Ram, Respondent No. 1, was below 25 years of age on the date of scrutiny, i.e., 7th November, 1953, in as much as the latter was not qualified to be chosen for this seat in the Legislative Assembly on 4th November, 1953. Thus the result of election was materially affected.

6. Referring to the corrupt and illegal practices alleged to have been committed by the returned candidates, their agents or by other persons with their connivance, the petitioner asserts that the returned candidate convened Panchayats in Malguzari villages of the Constituency and gave open threats of social boycott to the unwilling tenants to fall in line with the supporters of Respondents Nos. 1 and 2 and are guilty of exercising undue influence. They also abetted and attempted to procure ballot papers by false personation, and are guilty of publication of false statements regarding the personal character and conduct of Shri Ganga Ram, Respondent No. 5, thus prejudicing the prospects of the sure election of the latter. They transported electors to and from polling stations in hired and procured conveyances, and utilised the services of persons serving under the Government of India and Punjab State for furtherance of the prospects of their election. They incurred an unauthorised expenditure in contravention of the Representation of People Act, 1951 and Rules thereunder, and are guilty of making false returns of election expenses and verifying the same in material particulars. They made systematic appeals to the large Bishnoi Community Electorate of the Constituency in desisting from voting for the Congress nominee, because no Congress ticket was given to Shri Mani Ram Bishnoi of Badopal (P.W. 1).

7. It is further alleged that one Het Ram son of Hira Lal of village Dhangar, Tehsil Fatehabad, incurred expenses on the publication of the posters titled "Fatehabad Tehsil Ko Chetawani—Kunba Parast Waziron Se Khatra" in the Nav Jewan Press, Hissar, which were distributed throughout the Constituency on a large scale and materially affected the result of election of Ch. Ganga Ram, Respondent No. 5, against whose conduct and personal character these false statements were made in the posters. The chances of success of the petitioner as a Congress nominee for the Scheduled Caste seat were also thus prejudiced.

8. The returned candidates did not keep day to day account of their election expenses in accordance with law and incurred unauthorised expenses.

9. Therefore, in view of these allegations, the petitioner prays for ordering of a fresh election in this Constituency after setting aside the election of Respondents Nos. 1 and 2.

10. The petitioner attached lists of the corrupt practices of the contesting respondents with the petition *vide* lists A to H and Ex. P.A, copy of the poster.

11. Preliminary objections were raised by Shri Balu Ram, Respondent No. 1 to the Election Petition and the lists appended therewith to the effect that the data furnished in the lists was much too meagre and inadequate to give full notice of the case of the petitioner to the respondent and lacked in certain particulars. Briefly stated these objections are:—

- (a) List A (Undue influence). General practice of undue influence and intimidation is urged without giving the names of persons exercising, the persons influenced and the date of exercising the same.
- (b) List B (False personation). No names of persons issuing identification slips and of polling Agents who did so were given.
- (c) List C (Publication of false statements). Date of the publication of posters Ex. P.A, places where these were distributed and names of persons influenced, have not been given.
- (d) List D (Hiring or procuring unauthorised conveyances). Plate number of the tractor and jeep and names of the voters carried thereon are not given.
- (e) List E (Seeking help from Government servants). Names of persons canvassed, dates of canvassing and places of canvassing are not given.
- (f) List F (Incurring an unauthorised expenditure against law). No approximate amount is given nor is there any indication of how much amount in excess over the prescribed limit was incurred. (The objection relates to paras. Nos. 1 and 3 only of the list F).
- (g) List G (Filing false returns of expenses). Names of Donors, amounts of donations, places and villages are not given, nor the names of owners of trucks, jeeps, camels used in conveying voters have been disclosed. The plate numbers of vehicles, names of villages where the same were used have been omitted nor any attempt is made to mention the names of persons fed, or of agents who travelled by those vehicles, the dates of the use of vehicles and places where these were plied. The dates of the alleged use of loud speakers, places of meetings and dates of distribution of posters etc. are not given.
- (h) List H (Making systematic appeals on basis of caste). Dates of such appeals and names of the persons making the same at the meetings are not given.

12. The petitioner in his reply dated 3rd August, 1954 controverted these objections saying "that all details according to law which could possibly be furnished at the time of filing of the petition, and were in the knowledge of the petitioner, have been furnished in the lists attached to the petition, which give a concise statement of material facts on which the petitioner relies". The lists and the petition are in accordance with law and are not vague nor do they lack in the legally required particulars and thus there is no chance of any surprise being sprung on the respondents. Whatever names of the parties committing the corrupt practice and the date and place of commission of the same were known to the petitioner have been given. The petitioner was not expected to disclose his evidence before hand to his detriment.

13. Written reply was filed on behalf of Respondent No. 1 and the counsel for the petitioner did not add anything to the reply of petitioner to these (Preliminary objections), which were disposed of by the Tribunal by its order,

dated 30th August, 1954, on the file (*vide* Annexure A). On list F, item (a) the petitioner did not give any indication of even the approximate amount of alleged unauthorised expenditure. It being vague was struck off. The petitioner was allowed time to ascertain and give the numbers of jecps, trucks and tractors, but he failed to do so, *vide* his statement, dated 31st August, 1954, on file.

14. The contesting Respondents Nos. 1 and 2 Shri Balu Ram and Shri Mani Ram Bagri in their written statement admit paras. Nos. 1 to 9 of the petition, pertaining to the holding of the bye-election in December 1953 in this Constituency, the filing of the seven nomination papers by the candidates, the acceptance of the same by S. Udharn Singh, Returning Officer, the withdrawal by Respondents Nos. 4 and 6, the dates of poll and (repoll only in Dharsool polling station), the declaration of the result of election in favour of Respondents Nos. 1 and 2, the publication in the Punjab Government Gazette Extraordinary on 22nd December, 1953, and lastly the competency of the petitioner to file this petition. It is admitted that respondents were the nominees of the Parja Socialist Party and the fact of the petitioner and Ch. Ganga Ram, Respondent No. 5, fighting the bye-election on Congress ticket is not denied. The election is alleged to have been wholly fair, free from any irregularities, untampered by any coercion or undue influence exercised from any quarters. The holding of Panchayats in Malguzari villages to win over wavering tenant voters by means of suttin 'Dharna' is denied. Regarding the nomination papers of Respondent No. 1 Shri Balu Ram it is asserted that the same were perfectly in order and were properly accepted by the Returning Officer, and on the date of scrutiny Shri Balu Ram was fully qualified and eligible to file his nomination papers on 4th November, 1953 being 25 years of age on that date.

15. Allegations in para. No. 12 of petition are denied and it is not admitted that the Contesting Respondents, the agents or any other persons with their connivance, committed any of the alleged corrupt practices attributed to them. No Panchayats were held in Malguzari villages to hold out any threat of social boycott, and it is not shown how the chances of election of the petitioner were prejudiced. The voters in view of the services to the tenants by the Parja Socialist Party, voted in favour of its nominees (Respondents Nos. 1 and 2).

16. The allegation about abatement in procuring the application for the ballot paper by Partap Singh s/o Phul Singh of Nehla in the name of his brother Sajjan Singh and thus being guilty of the act of false personation is denied. The respondents plead ignorance about the prosecution of Partap Singh and his conviction. Similar reference to one Sheo Datt, Voter No. 2710 of Polling Station, Tibbi, about false personation is denied. The respondents do not admit para. No. 15 of the petition relating to publication of a poster by one Het Ram is in the Nav Jewan Press, Hissar, of which Sahi Ram is Manager and Proprietor, with the connivance of Sahi Ram and the respondents, because Het Ram was neither a canvasser nor agent of the Respondents Nos. 1 and 2. On the contrary he was a congressite and there was rift in the Congress party. One group supported Shri Ganga Ram, Respondent No. 5, while the other group sided with Mani Ram Bishnoi (P.W. 1). One Swami Atma Nand who supported the petitioner, but was opposed to Ch. Ganga Ram, Respondent No. 5, got the poster under reference printed under the name of Het Ram. Swami Atma Nand paid the publication charges on 7th December, 1953 while signing the register of the Press. As the false statements in the poster pertain to Respondent No. 5, Shri Dalbir Singh has no right to rely on the same when Ch. Ganga Ram has not filed any election petition. The poster did not materially affect the result of election of Respondent No. 5, and the petitioner.

17. The Respondents Nos. 1 and 2 deny having conveyed any electors to and from the polling stations in hired or procured vehicles or on camels, and they do not admit having obtained or sought official help from Government servants, nor is it admitted that any officials canvassed for Respondent No. 2. It is, however, admitted that Daryao Singh, Manphul Singh and Amin Chand acted as polling agents of Respondent No. 1 in order to safeguard against impersonation. The allegation about one Sohan Lal being polling agent of Respondent No. 2 is denied.

18. The contesting respondents do not admit having incurred an unauthorized expenditure in contravention of law nor do they admit incurring any expense on the publication of the posters. They also deny having filed false returns of election expenses or made false verifications in material particulars. They do not admit any of the clause in List 'G'.

19. They averred that it was incorrect that persons mentioned in List 'H' made any systematic mass or individual appeals to Bishnoi community in the Constituency not to vote for Congress for its betrayal of Bishnois by refusing to give its ticket to Mani Ram (P.W. 1). They assert that the allegations in para. No. 20 of the petition do not fall within the ambit of sections 123 and 124 of the Representation of People Act.

20. They added that since the accounts were kept in the requisite manner, no corrupt practice was committed.

21. On the pleas of the parties the following issues were framed:—

#### ISSUES

- (i) Was coercion exercised in the bye-election in question on an extensive scale as stated in para. 10 of the petition, if so, was the election wholly void? O.P.
- (ii) Was the nomination paper of Respondent No. 1 improperly accepted by the Returning Officer S. Udham Singh on 7th November, 1953, and was Respondent No. 1 less than 25 years of age on 4th November, 1953, if so, what is its effect? O.P.
- (iii) Did Respondents Nos. 1 and 2 themselves and through their agents convene Panchayats in Malguzari villages of the Constituency and openly held out a threat to boycott those tenants socially who did not fall in line with them, and thus exercised undue influence as given in list 'A'? O.P.
- (iv) Did the Respondents Nos. 1 and 2 themselves and through their agents abet and attempt false personation in procuring the application for ballot papers as detailed in list 'B'? O.P.
- (v) Did Respondents Nos. 1 and 2 personally and through their agents or through other persons with the connivance of Respondents Nos. 1 and 2 and their agents, indulge in publication of false statements in relation to the personal character and conduct of Respondent No. 5 to his prejudice as detailed in List 'C', if so, what is its effect? O.P.
- (vi) Did Respondents Nos. 1 and 2 themselves and through their agents convey electors to and from Polling Stations in hired or procured vehicles as detailed in List 'D'? O.P.
- (vii) Did Respondents Nos. 1 and 2 themselves, or through their agents, obtain, procure or attempt to do so, the assistance of persons serving under the Punjab State or Government of India, for furtherance of the prospects of their election as detailed in List 'E'? O.P.
- (viii) Did Respondents Nos. 1 and 2 themselves or through their agents incur an unauthorised expenditure in contravention of the Representation of People Act, 1951 and Rules thereunder as enumerated in items Nos. 1, 2, 3 of List 'F'? O.P.
- (ix) Did Respondents Nos. 1 and 2 make false returns of election expenses and their verification as given in List 'G' and has it materially affected the result of the election? O.P.
- (x) Did Respondents Nos. 1 and 2 personally or through their agents resort to systematic appealing to the large Bishnoi community electorate of this Constituency not to vote for the Congress nominee, because Congress failed to give its ticket to Shri Mani Ram Bishnoi of Badopal as detailed in List 'H'? O.P.
- (xi) Did one Het Ram son of Hira Lal of village Dhangar, Tehsil Fatehabad incur expenses on the poster "Fatehabad Tehsil Ko Chitawani—Kunba Parast Waziron se Khatra" printed in Naujiwan Press, Hissar, and distribute it in the Constituency, which attacked the personal character and conduct of Respondent No. 5, and prejudice prospect of his election and of the Schedule Caste Nominee of the Congress, if so, what is its effect? O.P.
- (xii) Did not Respondents Nos. 1 and 2 keep day to day accounts of their election expenses in accordance with law? O.P.
- (xiii) Relief?

22. There are six respondents in this petition. Out of them Shri Balu Ram and Shri Mani Ram Bagri, Respondents Nos. 1 and 2 have contested this election petition. Both the respondents and the petitioner have led considerable evidence in this case.

23. The petitioner has not pressed certain issues and has given them up for want of evidence. The main controversy centres round issues Nos. (ii), (v), (vii) and (xi). We will, however, record our finding on each issue.

*Issues Nos. (i), (iii) and (ix)*

24. These issues have not been pressed by the learned counsel for the petitioner and he admits that there is no evidence to substantiate these issues. The Tribunal, however, has examined the record and finds that there is hardly any evidence on issues Nos. (i), (iii) and (ix).

*Issue No. (vi)*

25. This issue relates to conveying of voters in vehicles. The petitioner examined Ram Rikh (P.W. 7), Sohan Lal (P.W. 8), Asa Ram (P.W. 9), Phusa Ram (P.W. 10), Sohan Lal (P.W. 20), Boga alias Ram Has (P.W. 36), Budh Ram (P.W. 37) and Shri Dalbir Singh, petitioner (P.W. 47). The purport of their evidence is that voters were conveyed in some tractors, jeeps and on camels. The petitioner was asked to furnish the registered number of the tractor or jeep, but he has failed to do so. It is very difficult to fix the identity of the vehicles in question, even if some tractor or jeep was used for carrying any voter. There is absolutely no evidence to show that the said vehicles were procured by him or at the instance of Shri Mani Ram Bagri, Respondent No. 2 or any of his agents or at their instance. Shri Sohan Lal (P.W. 20) states that Shri Mani Ram, Respondent No. 2, borrowed his car in the bye-election for one day when the polling took place at Fatehabad. He has given the number of his car as P.N.W. 375. There is not a scintilla of evidence to show that this car was ever used for carrying the voters from the villages to the polling stations. No witness has mentioned anything about this car. He further admits that the car was taken away by one Bhagirat, because Shri Mani Ram, Respondent No. 2, had asked him five or six days before the polling to lend the car to him. Bhagirat has not been produced in this case. All that he states is that Bhagirat took away the car on the day of the polling, but he cannot say whether Bhagirat used this car for carrying the voters to the polling station. The witness admits that he had no talk with Bhagirat about this bye-election when the car was returned to him by Bhagirat. It may be that Bhagirat took the car for his own purpose and had never used in connection with this election. The evidence of other witnesses is too vague and cannot be relied upon. The learned counsel for the petitioner had rightly conceded that there is no evidence to support this issue. We hold that this issue has not been proved. The issue is decided against the petitioner.

*Issue No. (viii)*

26. This issue relates to the expenditure in contravention of the Representation of the People Act, 1951, and the rules thereunder as enumerated in items Nos. 2 and 3 of list 'F' attached to the petition. Item No. 2 of the said list mentions that the Returned candidate unlawfully spent on the publication of the poster entitled "Fatehabad Tehsil Ko Chitawani—Kunba Parast Waziron se Khatra". It has been amply proved on the record that one Het Ram got the above poster Ex. P.A, printed at Naujiwan Press, Hissar and that one Swami Atma Nand paid Rs. 5 out of the total bill of Rs. 10 to the Manager Shri Sahi Ram (P.W. 46), proprietor of the said press. There is large amount of conflicting evidence as to whether Swami Atma Nand belonged to Congress Party or to the Socialist Party. Anyhow no connection has been proved between Swami Atma Nand and Shri Mani Ram, Respondent No. 2. There is not an iota of evidence on the record to show that Shri Mani Ram, Respondent No. 2 paid this amount or connived at the payment to Shri Sahi Ram (P.W. 46). This part of the issue is decided against the petitioner.

27. Item 3 of list 'F' mentions that the contesting respondents have incurred expenditure above the maximum limit prescribed. No evidence whatsoever has been led on this point.

28. Issue No. (viii) is accordingly decided against the petitioner.

*Issue No. (xii)*

29. The petitioner alleges that the Respondents Nos. 1 and 2 did not keep day to day accounts of their election expenses in accordance with the law. The contention of the learned counsel for the petitioner is that they should have kept regular and separate accounts from day to day. According to him the Respondents Nos. 1 and 2 have produced their account books after one year and the account books do not show that they were kept from day to day. No evidence was led by the petitioner on this issue, nor it has been shown that the respondents have incurred any expense, which was not entered in the accounts kept by them. As there is no evidence to substantiate this issue, the issue is decided against the petitioner.

## Issue No. (iv)

30. The petitioner alleges that Respondents Nos. 1 and 2 themselves and through their agents abetted and attempted false personation in procuring the application for ballot papers as detailed in list 'B'. The allegations contained in the list 'B' are that Gita Ram son of Hari Chand, Sher Singh son of Jagde, Uma Datt son of Mukha of village Nehla and Mange Ram, polling agents of the returned candidates caused the person, who was issuing identification slips on behalf of the returned candidates, to issue a slip to one Partap Singh son of Phul Singh of Nehla in the name of his brother Sajjan Singh, who was serving in the Military and induced Partap Singh to falsely personate for his brother Sajjan Singh. This Partap Singh secured the ballot paper in the name of his brother and was caught at the instance of the petitioner before putting the ballot paper in the box. Partap Singh was challaned and convicted for false personation. This incident took place at Nehla polling station on 13th December, 1953. To support this allegation the petitioner has examined Mr. Manohar Lal Bhandari (P.W. 33), Polling Officer, Nehla Polling Station. The witness states that one Risal Singh son of Mehar Chand Chamar complained to him that Partap Singh son of Phul Singh falsely personated for his brother Sajjan Singh, who was in the Army. He caught hold of the identity slip Ex. P.D and the ballot papers, Exs. P.B and P.C from Partap Singh. He made a report Ex. P.G to the police. Consequently Partap Singh was challaned and convicted by a Magistrate. Partap Singh appeared as P.W. 39 and admits the personation. He states that he was told by a boy that he could vote for his brother Sajjan Singh and therefore he obtained the ballot papers giving his name as Sajjan Singh. He admits that Risal Singh complained to the police about his personation and this Risal Singh was acting as an agent of some candidate. As regards the identity slip Ex. P.D he could not say by whom it was issued.

31. Risal Singh was examined as P.W. 40. He states that Partap Singh, P.W. 39, brought the identity slip inside the polling booth from the Socialist Party and that one Uma Datt son of Mukha of village Nehla was following Partap Singh and that Uma Datt was an agent of the Socialist Party. It is contended by the learned counsel for the petitioner that as Uma Datt being the agent of the Socialist Party was following Partap Singh, therefore, it should be presumed that ballot papers were given by Uma Datt to Partap Singh or that Uma Datt was responsible for this personation. Mere following Partap Singh by Uma Datt *per se* proves nothing. He was an agent of the Respondents Nos. 1 and 2 and he could go any time inside the polling booth whenever and wherever he liked. There is no other evidence to show that this personation was done either at the instance of Shri Mani Ram, Respondent No. 2 or by any of his agent. Shri Manohar Lal Bhandari, Polling Officer (P.W. 33), admits in his cross-examination that neither Shri Mani Ram Bagri nor Shri Balu Ram respondents were present at the polling station when this complaint was made to him. In order to bring the case within the ambit of section 123(3) of the Representation of the People Act, 1951, the personation must be procured either by the candidate or his agent or by any other person with the connivance of the candidate or his agent. There is absolutely no evidence to connect Shri Mani Ram, Respondent No. 2, with this false personation and therefore he cannot be held responsible for the same.

32. In item No. 2 of list 'B' the petitioner alleges that one Sheo Datt son of Kanhaya, a voter No. 2710 at Polling Station Tibbi, was made to apply for a vote falsely by the polling agents of the contesting respondents on 13th December, 1953 at Tibbi Polling Station, while he had no vote. The petitioner has led no evidence on this point. The counsel for the petitioner concedes.

33. Hence issue No. (iv) is decided against the petitioner.

## Issue No. (x)

34. The petitioner alleges in list 'H' attached to the petition as under:—

- "1. That Respondent No. 1 sought official help from one Lal Chand son of Girdhari, Jat of V. Bhodia Khara Pachadgan, a Sarpanch of the Village Panchayat and Mohri Ram, Lambardar and a Panch of V. Panchayat of Bhodia Khara Pachadgan from the very beginning of his election campaign inasmuch so that he persuaded them to sign his nomination paper in the capacity of proposer and seconder and to canvass for him in village Bhodia Khara Pachadgan right from the date of signing the nomination papers upto the polling day. These officials canvassed votes for Respondent No. 1 off and on throughout the constituency from the filing of the nomination papers i.e. 4th November, 1953 upto the polling day.

2. That Mani Ram, Respondent No. 2, sought official help from Daryao Singh, Lambardar of Dharsool Kalan, Sohan Lal son of Jawana Bishnoi, Lambardar of village Dhangar and Manphool Singh s/o of Harji Ram, Jat of V. Bhatoo Kalan, a Government pensioner, ex-Hawaldar of the Indian Army, and Amin Chand s/o Ganesha Singh, member, Panchayat Khabra Kalan, from the very beginning of his election campaign i.e. from the beginning of October, 1953, till the polling day. All these four officials canvassed votes for Respondent No. 2 in their own villages and also went to other villages in the constituency along with Respondent No. 2, quite off and on from the middle of October till the polling day for canvassing support for Respondent No. 2. This support of these four Government officials culminated into their appointments as polling agents for Respondent No. 2. Daryao Singh was appointed polling agent for Dharsool Kalan Polling Station and acted as such on 13th December, 1953. Manphool Singh, Government pensioner, was appointed polling agent for Bhigar."

35. In support of this issue the petitioner has examined Shri Mani Ram (P.W. 1), Ch. Ganga Ram (P.W. 2), Shri Ram Partap (P.W. 3), Rati Ram (P.W. 4), Thakar (P.W. 5), Ram Rikh (P.W. 7), Asa Ram (P.W. 9), Phusa Ram (P.W. 10), Ganesha (P.W. 11), and himself as P.W. 47. Shri Mani Ram Bishnoi (P.W. 1), states that he was one of the candidates for the Congress Party relating to the election of this constituency, but the Congress ticket was given to Ch. Ganga Ram (P.W. 2). The number of Bishnoi voters in this constituency was approximately 15,000. He states that as he was not given the Congress ticket, the Bishnoi Community of this Constituency decided to oppose the Congress candidate. A propaganda was made by Respondent No. 2, Doctor Ram Manohar Lohia (R.W. 60), Shri Tilak Raj Chadha (R.W. 42), Shri Het Ram (R.W. 43) and others. A meeting was held in village Badopal about 5 or 6 days before the polling. Ram Rikh (P.W. 7) also states that the purport of the speeches of the above-mentioned persons was that as the Congress had not given the ticket to Shri Mani Ram Bishnoi (P.W. 1), therefore the Bishnoi Community should not support the Congress candidate. Asa Ram (P.W. 9), Phusa Ram (P.W. 10) and Ganesha (P.W. 11), support Shri Mani Ram Bishnoi (P.W. 1) in this respect. They all deposed about the meeting held at village Badopal. On the other hand, Shanker (R.W. 28) says that Shri Mani Ram, Respondent No. 2 and Doctor Ram Manohar Lohia (R.W. 60) did not exhort the audience not to give votes to the Congress on the ground that the Congress did not give the ticket to the Bishnoi candidate.

36. A meeting was held at village Sadalpur, four or five days before the polling started, in which one Sahi Ram, proprietor of Naujiwan Press, Hissar, Het Ram, respondent, Sultan Singh and two or four others exhorted the audience not to vote for the Congress, as the Congress did not issue its ticket to Shri Mani Ram Bishnoi (P.W. 1), who belonged to their brotherhood.

37. Shri Mani Ram (P.W. 1) also mentions that at village Dhangar similar speeches were delivered by Shri Mani Ram, Respondent No. 2, Shri Ganga Ram (P.W. 2) states that four or five days before the polling a meeting was held at Fatehabad, which was addressed by Doctor Ram Manohar Lohia, Shri Mani Ram, Respondent No. 2, Shri Shaida Sahib and others, in which propaganda, as stated above, was made. Doctor Ram Manohar Lohia (R.W. 60) states that he addressed about 6 to 10 meetings and further states as under:—

"It is entirely wrong that I exhorted the Bishnois of that District to oppose the Congress, as that party had not nominated any one from that Community."

Similarly Shri Mani Ram, Respondent as R.W. 59, states that he did not exhort the audience to vote for him on the ground that the Congress had failed to give ticket to Shri Mani Ram Bishnoi (P.W. 1).

38. To bring the case within the ambit of section 124(5) of the Representation of the People Act, 1951, it is necessary to establish that there was systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion etc. We are not satisfied that any systematic appeal was made to the Bishnoi Community to vote for the Socialist candidate, as the Congress ticket was refused to Shri Mani Ram (P.W. 1). To prove this issue it is further necessary to establish that the result of election has been materially affected by such a corrupt practice. There is nothing on the record to warrant the inference that the result of election was materially affected. After careful scrutiny of the whole evidence on the record the Tribunal is of opinion that this issue has not been proved satisfactorily. The issue is decided against the petitioner.



## Issue No. (ii)

39. The petitioner alleges in para. 11 of the petition as under:—

“That the election for this constituency is wholly void because its result has been materially affected by the illegal and improper acceptance of the nomination paper by S. Udham Singh, Returning Officer of this Constituency on 7th November, 1953, the date of scrutiny, inasmuch as Respondent No. 1 was not qualified to be chosen to fill a seat in the Legislative Assembly of a State on 4th November, 1953, the last date for filing nominations, on which date he filed his nomination papers, he being below 25 years of age on that date.”

In support of this issue the petitioner has examined Siri Chand (P.W. 17), Tulsan (P.W. 18), Shri Kundan Lal (P.W. 19), Mani Ram (P.W. 21), Ganesha (P.W. 23) and Bhani (P.W. 43). There is also documentary evidence on record Ex. P.H—certified copy of the register of births and deaths, and extracts from the school admission register, Ex. P.W.19/A and Ex. R.W.14/A.

40. According to Siri Chand (P.W. 17), Shri Balu Ram, respondent, was born in Sammat 1985 in the month of Manghsar. His original name was Ladhu and on the seventh day of his birth the Pandit after consulting the ‘Jantri’ gave him his name as Balu. Tulsan (P.W. 18) states that Shri Balu Ram was born in Sammat 1985, but he does not remember the month. Both these witnesses are not related to Shri Balu Ram, Respondent No. 1. According to Shri Mani Ram (P.W. 21), a Zamindar of village Bhodia Khara Pachadgan, Balu Ram’s father’s name is Mangla and his grandfather’s name is Kalu. Both the father and grandfather are dead. There is no other person of this name and parentage in that village. Shri Balu Ram is also known by the name of Ladhu. He is corroborated by Ganesha (P.W. 23). The petitioner also produced Bhani (P.W. 43), younger brother of Shri Balu Ram, respondent, as a witness. He states that his grandfather’s name was Kalu Ram and that there was no other Mangla Ram son of Kalu Ram except his father in his village. In cross-examination he mentions that his brother Maru is also known by the name of Ladhu and Shri Balu Ram was named by Pandit as Kanshi Ram, when he was born. According to him Ladhu is about 26 years of age and Shri Balu Ram, respondent, is about 29 years.

41. Two school teachers have been examined in this connection. Shri Kundan Lal, Head Master, D.B. High School, Fatehabad (P.W. 19), states that Shri Balu Ram, respondent, joined his school on 1st June, 1944 and that according to the admission register his date of birth is 6th June, 1928. The copy of the relevant entry in the register has been exhibited as Ex. P.W.19/A. Shri Chet Ram, Teacher (R.W. 14), admitted Shri Balu Ram, respondent, on 15th August, 1940. According to the register his date of birth is entered as 6th June 1928. The witness states that this date of birth was given by his father Mangla Ram. The relevant entry of the register has been produced and exhibited as R.W.14/A. Shri Balu Ram, respondent, has produced one Dhanna Ram (R.W. 8). In examination-in-chief the witness does not say anything about the age of Shri Balu Ram, respondent. In cross-examination he says that Shri Balu Ram has two more brothers, who are younger to him. Their names are Maru and Bhani Ram. Maru is also known by the name of Kanshi, again said Ladhu. Nihal Singh (R.W. 9), who is 27 years of age states that when he joined the Primary School, Shri Balu Ram, respondent, was in the Second Primary Class. Another witness Piru (R.W. 10), 62 years of age of village Bhodia Khara states that Shri Balu Ram, respondent, is the eldest of his brothers, who is younger by 10 days to his son Kesra, who is about 27 or 28 years old. He further states that Chaukidar gave the name of Shri Balu Ram, respondent, on his birth as Maru Ram, but after 10 or 15 days the Prohit named him as Balu Ram. Ladhu Ram (R.W. 11) mentions the fact that Shri Balu Ram, respondent, was 14 years old, when he joined the primary class in the Primary School, but his age in the school register was given as 12 by his father. He further states that the Chaukidar entered his name in the birth register at the police station as Kanshi Ram. Girdhari Lal (R.W. 32) and Bhankar (R.W. 33) give estimate of the age of Shri Balu Ram, respondent, at about 30 years. Shri Balu Ram respondent, offered himself as a witness as R.W. 58. He says that although his date of birth is entered in the school register as 6th June 1928, but that is wrong, because the Head Master of the institution told his father that he was over age and therefore his father gave his age less by two years. He states that he was born on 9th July, 1926. This is all the evidence that has been produced by the parties in this case.

42. At the outset the learned counsel for the petitioner submits that the quantum of evidence required to prove this issue should not be as that of a criminal charge as in the case of a bribery, corruption, false statements undue

influence etc. He contends that disqualification under Article 173 of the Indian Constitution does not entail any penalty or disqualification and therefore the standard of proof should be that of a civil case. We cannot subscribe to such a broad proposition. It is well established that the allegation of corrupt practice is a quasi-criminal charge. The expression used in sections 99 and 100 of the Representation of the People Act, 1951, is "Guilty of any corrupt or illegal practice" also suggests that the charge is of a criminal nature. Moreover, bribery, undue influence, personation, false statements, illegal payments and failure to keep accounts at or in connection with election are offences punishable with imprisonment or fine under section 171(e) to (i) of the Indian Penal Code. The commission of corrupt or illegal practice relating to election entails penalty by way of disqualification for membership of Parliament and the State Legislature for a period of four to six years. Citation of any authority is unnecessary to establish such a plain proposition. Hence evidence requisite to prove false statement or any other corrupt practice should not fall short of evidence required to prove any criminal charge.

43. The argument of the learned counsel for the petitioner overlooks the fact that finding by the Tribunal to the effect that Respondent No. 1 was less than 25 years of age at the relevant date would entail his disqualification and his election will be set aside. Hence the quantum of evidence in such a case should be that of a criminal charge. Generally speaking, a person cannot be found guilty on the uncorroborated evidence of a single witness. Courts always expect, as a matter of prudence some corroboration. If there is any reasonable doubt, the benefit goes to the sitting member. The contention of the petitioner's counsel is that issue No. (ii) should be decided merely on the preponderance of evidence or mere probabilities. He further contends that onus in such a case should keep on shifting from one party to the other. We cannot see any force in this contention. We hold that the quantum of evidence should be that of a quasi-criminal charge and if there is any reasonable doubt created in the mind of the Tribunal the benefit must go to Respondent No. 1.

44. Hence we will scrutinise this evidence in consonance with the principles enunciated above. It is quite clear that oral evidence with regard to age specially in India is highly unsatisfactory. Unfortunately no records are kept of the birth of a child by the parents. In this case the matter has been further complicated, because Shri Balu Ram, respondent, and his two brothers Maru and Phani were given different names at the time of their births and only their *aliases* were recorded in the birth entries. We find that Mangla son of Kalu, Chamar of village Bhodia Khera Pachadgan has got three sons, but their real names were not given by the Chaukidar at the time when their births were entered in the Register of Births. Conflicting evidence has been led on the record to show whether Shri Balu Ram, respondent, was known by the name of Ladhu or Kanshi Ram.

45. After the counsel for the petitioner had addressed the Tribunal on issue No. (ii) an application was put in on behalf of Shri Balu Ram, Respondent No. 1, on 11th January, 1956, requesting the Tribunal to admit copies of the birth certificates relating to one Gorkha son of Mangla who was born on 6th August, 1933 and another copy of the birth certificate relating to one Kanshi son of Mangla, born on 9th July, 1926. The Tribunal in its order dated 12th January, 1956, refused to admit these two copies in evidence for reasons recorded in its detailed order of the said date.

46. The petitioner tried to show by his evidence that Respondent No. 1, was known as Ladhu Ram and that Ex. P.H relates to him. He contends that the date given by the father of Shri Balu Ram to the Headmaster was ostensibly wrong because a son was born to Mangla on 26th November, 1928. His case is that the date of birth given by the father as 6th June, 1928 is absolutely wrong, because another son could not be born within the span of five months, i.e. on 26th November, 1928. He submits that the father of Shri Balu Ram, Respondent No. 1, must have made a mistake of few months in giving the age of Shri Balu Ram. On this probability he argues that the Tribunal should hold that Ex. P. relates to Balu Ram, Respondent No. 1 and as he was born on 26th November, 1928, he was below 25 years of age on the relevant date i.e. 4th November, 1953 when the nomination paper of Shri Balu Ram, Respondent No. 1 was filed.

47. On the other hand, the respondent's evidence is to the effect that Shri Balu Ram was known as Kanshi Ram and that he was about 29 years of age thus fully qualified to stand for an election. The learned counsel for the respondent Shri Rajender Sacher submits that if the father could make a mistake of five months giving the true age of his son, he could equally commit a mistake of two years in doing so.

48. There is absolutely no reliable evidence in this case on which this Tribunal can rely in fixing the date of birth of Respondent No. 1. The petitioner's counsel wants the Tribunal to decide this case on mere probability that the mistake could only be of five months and not of two years. As indicated earlier the standard of proof should be that of criminal charge. Even if we apply the standard of proof as in civil cases, the evidence produced in this case falls short of that standard. The onus was on the petitioner to prove positively that on the relevant date, i.e. the date for filing nomination papers, Respondent No. 1 was below 25 years of age, which he has failed to discharge. Considering all the relevant evidence the Tribunal is clearly of the opinion that the petitioner has failed to substantiate this issue. Accordingly it is decided against the petitioner.

*Issue No. (vii)*

49. It is alleged in para. 17 of the petition that both the returned candidates, by themselves, through their agents or through other persons with the connivance of the returned candidates and their agents have been guilty of obtaining, procuring and attempting to obtain and procure assistance for the furtherance of the prospects of their election from persons serving under the Punjab State and the Government of India. The known particulars of this corrupt practice are given in list 'E' attached with the petition.

50. In list 'E' the petitioner has mentioned that Respondent No. 1 sought help from Lal Chand, Sarpanch and Mohri Ram, Lambardar and a Panch of village Bhodia Khora Pachadgan, whereas Shri Mani Ram, Respondent No. 2, sought official help from Daryao Singh, Lambardar of Dharsool Kalan, Shri Sohan Lal, Lambardar of Dhangar, Shri Manphool Singh, a Government pensioner of village Bhattoo Kalan and Amin Chand, Panch of village Khabra Kalan and that he appointed them as his polling agents. He further alleged that both Respondents Nos. 1 and 2 sought official help in form of canvassing support for them in furtherance of their election right from the beginning of the election campaign somewhere in the middle of October, 1953 upto the polling day from village officials, 14 in number as enumerated in para. 3 of list 'E'.

51. The respondents stoutly denied these allegations against them. The position taken by Shri Mani Ram, Respondent No. 2, is that he went to village Dharsool Kalan, made a speech and asked somebody to volunteer himself as his agent. At this Daryao Singh got up and volunteered his services and therefore, he appointed him as his polling agent. Shri Mani Ram, Respondent No. 2, alleges that he did not know that he was a Lambardar. The learned counsel for the petitioner in his arguments confined himself only to the case of Daryao Singh, Lambardar. He submitted that the evidence on the record with regard to other officials was not sufficient to establish the charge against the respondents and therefore he omitted any reference to the evidence pertaining to them. We have also gone through the evidence and find that the evidence with regard to officials other than Daryao Singh, Lambardar, is too meagre to establish corrupt practice.

52. It may be noted at the very outset that mere appointment of a Lambardar as a polling agent does not *per se* establish any corrupt practice. If besides the appointment of a Lambardar as polling agent some convincing evidence is produced to establish that the said Lambardar also canvassed for the candidate or took any active part in the election of a candidate, then it would amount to corrupt practice. In this case Daryao Singh (P.W. 29) was examined by the petitioner. He admits that he acted as polling agent of Shri Mani Ram, Respondent No. 2, on the 13th of December, 1953, and that he had been going to various places and canvassed for Shri Mani Ram, Respondent No. 2, along with him. He further states that he went out of his village with Shri Mani Ram, Respondent No. 2, for canvassing several times to villages of Lahri, Dhani and Kheri etc. He further states that he distributed some of the pamphlets on behalf of Respondent No. 2 in his village and other villages. According to him he went to village Lahri and there canvassed one Amin Lal, who is a Malguzar. At village Kheri he canvassed one Hanwanta and at Tohana besides some other persons he went to the house of Rabbi Chamar, who was a Chaudhri of the Harijans of the town. At Dhani he stated that he went to the house of Bihara only for canvassing.

53. We find that there is absolutely no corroboration of his statement so far as Dhani village is concerned. Regarding village Kheri the stand taken by Daryao Singh, Lambardar, is that he went to the house of Hanwanta and had a talk with him. The Respondent No. 2 Shri Mani Ram produced Dei Ram (R.W. 56) son of Hanwanta, Jat of village Kheri. He states that his father died 4½ years back in village Rajaund, District Karnal. He is corroborated by Bhaur

Singh (R.W. 51), Hari Ram (R.W. 52) and Mani Ram (R.W. 53). It is in evidence that there is no other person of the same name living in that village. The petitioner's counsel submits that it is unnatural to expect from a son to say that his father is dead and on that score he can be believed, but as to the date of the death it cannot be conclusively established unless the copy of the death entry is produced before the Tribunal, so as to enable it to come to a definite conclusion about the exact date of the death of the person concerned. Further he submits that after leading evidence of this nature by the respondent he had no right of rebuttal. One of the witnesses Gagan (R.W. 53) states that Hanwanta died in village Khori, while Dei Ram (R.W. 56) state that he died in village Rajaund in the Karnal District, while Hari Ram (R.W. 52) deposed that he died in village Radhan in Karnal District. Bhaur Singh (R.W. 51) does not say as to the place of death of Hanwanta. The respondent's evidence on this point is contradictory and no definite conclusion can be drawn as to the time of death of Hanwanta. Under these circumstances the assertion of Daryao Singh that he met Hanwanta cannot be ruled out.

54. At village Lahri Daryao Singh (P.W. 29) canvassed Amin Lal, who is a landlord, along with Shri Mani Ram, Respondent No. 2. The respondent has examined Ram Chand (R.W. 26) and Jag Ram (R.W. 27) of Lahri, who deposed that Daryao Singh, Lambardar, accompanied by Shri Mani Ram, respondent, never canvassed in their village. The petitioner's case is that Amin Lal was a big landlord and had considerable influence and therefore Daryao Singh, Lambardar and Shri Mani Ram, Respondent No. 2, approached him to exert his influence and canvass for him (Respondent No. 2) in the election. The evidence of respondent's witnesses is of a negative character. It may be that they might not be in the village at the relevant time when Daryao Singh and Shri Mani Ram, Respondent No. 2, visited their village. Besides, Mam Chand and Jag Ram, R.Ws., are tenants and they admit that Shri Mani Ram, Respondent No. 2, supported the tenants as against landlords, because there was tension between the Malguzars and the tenants. Amin Lal has not been produced by the respondents in order to contradict the evidence of Daryao Singh.

55. As regards Tohana town Daryao Singh (P.W. 29) states that he went along with Shri Mani Ram, Respondent No. 2, to canvass Rabbi, Chamar of Tohana. The petitioner has examined Rabbi's son Kahar Singh as P.W. 45. He states that in the bye-election Daryao Singh and two or three others came to Tohana to canvass for votes and Daryao Singh asked him and his father to vote for Shri Mani Ram, Respondent No. 2. In cross-examination he states that his father was Chaudhri of Chamars of Tohana and Daryao Singh, Lambardar, was on visiting terms even before. He stated that the party stayed at their house for about ten minutes and they had come in a jeep, when Daryao Singh, Lambardar, requested them to vote for Shri Mani Ram, Respondent No. 2. Rabbi told him that before that he had canvassed for the candidate of Congress. In spite of very lengthy cross-examination his evidence remained unshaken. He is corroborated by Ram Bhagat (P.W. 31), who says that two or three days before the polling Shri Mani Ram, Respondent No. 2, accompanied by Daryao Singh, P.W. and others came to Tohana for votes and he saw them at the house of Rabbi Chamar. Ram Bhagat (P.W. 31), is Secretary of the Congress Committee at Tohana. He also went at that time to canvass for the Congress to the house of Rabbi Chamar when Daryao Singh, P.W., accompanied by Shri Mani Ram, Respondent No. 2, reached there in order to canvass the vote of Rabbi Chamar. The time according to both these witnesses was about 3 P.M.

56. The Respondent No. 2 Shri Mani Ram examined Shri Balwant Singh (R.W. 23), Sikandar Lal (R.W. 24) and Doctor Nand Kishore (R.W. 25), who stated that Daryao Singh, Lambardar of Dharsul Kalan never came to Tohana to canvass for Socialist Party in this bye-election, accompanied by Respondent No. 2. Doctor Nand Kishore, R.W., is worker of the Socialist Party and a Secretary of the Socialist Party at Tohana for the last one year. The evidence is of a negative character and cannot outweigh the positive evidence led by the petitioner in this respect, especially when Rabbi's son has been examined and cross-examined at length. He is an independent witness and there is no reason to disbelieve him on this point.

57. After scanning the evidence on this point we find that there is a ring of truth in the evidence of Kahar Singh son of Rabbi Chamar (P.W. 45), when he states that his father was an influential man and was Chaudhri of the Chamars of Tohana. That is why both the parties approached him to secure all those votes, which were under his direct influence. Under the circumstances we hold that Daryao Singh along with Shri Mani Ram, Respondent No. 2, went to village Tohana to canvass for votes for Shri Mani Ram, Respondent No. 2.

The learned counsel for respondents urges that the position of Daryao Singh (P.W. 29) is that of an accomplice therefore cannot be relied upon unless corroborated in material particulars. Under section 123(8) of the Representation of the People Act, 1951, the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of the candidate or his agent, any assistance for the furtherance of the prospects of the candidates' election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person is major corrupt practice. The learned counsel for the petitioner submits that in this case Daryao Singh gave the help in the form of canvassing votes for Shri Mani Ram respondent No. 2. Daryao Singh cannot be held to be an accomplice in the sense that giver or receiver of bribe are both accomplices. If by any stretch of any language Daryao Singh is held to be an accomplice, there is sufficient corroboration in this case to establish that he along with Shri Mani Ram respondent No. 2 approached Rabi Chamar to canvass votes for Shri Mani Ram respondent No. 2. The evidence of Kahar Singh (P.W. 45) son of Rabi, who is an independent witness and of Ram Bhagat (P.W. 31), is relevant in this respect. Under the circumstances we hold that Daryao Singh Lambardar (P.W. 29) went along with Shri Mani Ram respondent No. 2 and canvassed Rabi Chamar at Tohana.

59. It is admitted by both parties that Daryao Singh Lambardar (P.W. 29) acted as polling agent of Shri Mani Ram respondent No. 2 on 13th December, 1953 at Dharsul Kalan polling station. The position taken up by respondent No. 2 is that 6/7 days before the poll he went to village Dharsul Kalan, made a speech there and asked the audience to give him a polling agent as he did not know any body there. On this Daryao Singh volunteered himself to act as his polling agent. He has produced Sunder Singh (R.W. 29) and Chandu (R.W. 30) who stated that about five or seven days before the poll Shri Mani Ram respondent No. 2 came to their village addressed the meeting and asked them for a polling agent and Shri Daryao Singh Lambardar P.W. volunteered himself to act as his agent. On this Shri Mani Ram respondent No. 2 appointed him as his polling agent and got his thumb impression on the polling agent's form. They further stated that on 18th December, 1953 Daryao Singh was in mourning, because his grand father had died. This fact is also deposed by Het Ram (R.W. 31) and another Het Ram (R.W. 18) of village Jakhod Khare.

60. The story given by Shri Mani Ram respondent No. 2 cannot be relied upon, because the date given on the polling agent's form is 10th December, 1953, while according to Sunder Singh (R.W. 29), it was five or seven days before the poll that the thumb impression of Daryao Singh Lambardar was obtained, and according to Chandu (R.W. 30) it was obtained seven or eight days before the poll. Similarly Shri Mani Ram respondent No. 2 as (R.W. 59) deposed that five or seven days before the polling he addressed the meeting and got thumb impression of Daryao Singh Lambardar on the polling agent's form. He further states that he did not appoint him as his polling agent on 18th December, 1953, the date of the repoll and appointed someone else.

61. From the circumstances set forth above it is proved that Shri Mani respondent No. 2 appointed Daryao Singh Lambardar P.W. as his polling agent.

62. One more objection was taken by the learned counsel for the respondents to the effect that Punjab Act (VII of 1952). The Punjab State Legislature (Prevention of Disqualification) Act authorises Lambardars to stand for State Legislature as a candidate. This Statute does not help the respondent, as it was enacted only to remove the disqualification of persons holding offices of profit under the State. The explanation added to Section 123(8) of the Representation of The People Act, 1951, includes village headman amongst the persons serving under the Government of any State. No Notification has been issued under this clause exempting a Lambardar or village headman from the operation of his Section. There is no force in the contention raised by the learned counsel and we reject the same.

63. Considering the whole evidence on the record we hold that Shri Mani Ram respondent No. 2 got the assistance of Daryao Singh Lambardar for the furtherance of the prospects of his election and thus has committed the major corrupt practice as defined in Section 123(8) of the Representation of People Act, 1951. This issue is, therefore, decided to this extent in favour of the petitioner and against respondent No. 2.

64. As regards Shri Balu Ram respondent No. 1 the allegation contained in para 1 of list 'E' is that he sought the official help from one Lal Chand son of Girdhari Lal, Jat of Bhodia Khara Pachadgan, a Sarpanch of the village Panchayat and Shri Mohri Ram a Lambardar and a Panch of the Panchayat of the said village, who signed his nomination papers as proposer and seconder and canvassed for him. The petitioner has produced a solitary witness Shri Mani Ram (P.W. 21) who states that Lal Chand and Mohri Ram canvassed for the Socialist Party in this by-election 24 or 25 days before the polling and that a pamphlet like Ex. P.A. was distributed at the polling station by the Socialist Party. In his cross examination he says that he does not know the actual words which Mohri Ram and Lal Chand uttered at the time of the canvassing for the Socialist Party. The evidence of this witness is vague and uncertain. He does not specifically state that Lal Chand and Mohri Ram canvassed for Shri Balu Ram respondent No. 1 or asked people to vote for Shri Balu Ram respondent No. 1 specifically. Mere asking people to help Socialist Party may not amount canvassing under certain circumstances. As against this evidence Shri Balu Ram respondent No. 1 has examined Lal Chand Sarpanch as R.W. 7, who stoutly denied having done any propaganda. He states, "It is incorrect that Mohri Ram Lambardar and I individually or collectively canvassed for the returned candidate in the by-election." This witness is a four anna member of the Congress. From the evidence on the record it cannot be said that Lal Chand and Mohri Ram canvassed for Shri Balu Ram respondent No. 1. Mere putting their signatures as proposer and seconder on the nomination papers by Lal Chand and Mohri Ram will not advance the case of the petitioner any further. It has been held by the Supreme Court that Government servants can be the proposer or seconder and this will not constitute a major corrupt practice.

65. The learned counsel for the petitioner has conceded that there is not sufficient evidence on the record to substantiate this issue, so far as Shri Balu Ram respondent No. 1 is concerned. We hold that this issue is not proved in its entirety against Shri Balu Ram respondent and is decided accordingly

#### Issue (V)

66. The petitioner alleges that respondents 1 and 2 along with Shri Sahi Ram Manager and Proprietor of the Naujiwan Press Hissar got published by one Het Ram son of Hira Lal of village Dhangar and also a canvasser and agent of two returned candidates, a poster under the heading "Fatehabad Tehsil Ko Chitawani-Kunba Parast Waziron Se Khatra", at Naujiwan Press Hissar (Ex. P.A.) containing grossly false statements, which all of them believed to be false in relation to the personal character and conduct of Ch. Ganga Ram respondent No. 5. He further alleges that this poster was distributed throughout the constituency long before the date of polling up to the polling day; that Shri Mani Ram respondent, his agent Net Ram, Om Prakash, Pritam Chand and others repeated the false statements contained in Ex. P.A. in various meetings.

67. Both the respondents in para 15 of their written statements denied the said allegation. The position taken up by them is that there was a rift in the local Congress. One group was supporting Ch. Ganga Ram respondent No. 5, while the other was supporting Shri Mani Ram Bishnoi (P.W. 1). One Swami Atma Nand supported Sh. Mani Ram (P.W. 1) and opposed the candidature of Ch. Ganga Ram respondent No. 5, and it was Swami Atma Nand who got the posters like Ex. P.A. printed under the name of Het Ram and paid for the same on the 7th of December, 1953, and signed in the register of the press. They further raised the objection that as the poster was against the personal character of Ch. Ganga Ram respondent No. 5, who is not the petitioner and has not filed any election petition, the petitioner Shri Dalbir Singh cannot make a grievance of the publication of poster Ex. P.A. and therefore the said poster is irrelevant in this case. In order to appreciate the allegations contained in Ex. P.A., it is desirable to reproduce the said poster *in extenso*. It runs as thus:—

#### "WARNING TO TEHSIL FATEHABAD.

Danger from the Ministers practising nepotism.

In order to defame (Soshan) this Tehsil. an old man aged 70 years is being taken in the Punjab Assembly. Your representative will help him. Should a

man having so many defects be sent to the Assembly with your votes? It will be disgrace to this Tehsil.

1. Who causes breaches in the canal ? . . . . Ganga Ram.
2. Who harbours the Goondas of the Tehsil ? . . . Ganga Ram.
3. Who is a Rishwat Dalal ? . . . . Ganga Ram.
4. Where is the centre of the foolish ? . . . . Gela Khera
5. Who was the henchman of the English ? . . . Ganga Ram.
6. Where is the slaughter house of all the animals ? . Gela Khera.
7. Burah Din Kaun (who is the oldest bridegroom) ? . Ganga Ram.
8. Who are the members of the marriage party of the old man The Ministers of the Punjab and the residents of Chotala.
9. Who are the most shameless fellows ? . . . The members of the marriage party of the old man, the Ministers of the Punjab and the residents of Chotala.
10. Turn out the ill reputed Ministers.  
Turn out the ill reputed Congress men.  
Who is a puppet Minister ? . . . . Sachar.
11. Who are his string pullers ? . . . . The Ministers of the Punjab and the residents of Chotala.
12. Who are the nepotists ? . . . . Devi Lal, Kairon and Jagat Naran
13. Who smuggles out paddy ? . . . . Ganga Ram.
14. Who are share holder in the companies ? . . . Devi Lal Kairon and Jagat Naran
15. Who are responsible for getting disgrace to Fatehabad Tehsil ? Devi Lal, Kairon and Jagat Naran.
16. Who are responsible for entrusting  
The interests of Fatehabad Tehsil in the hands of the fool ? Kairon, Jagat Naran and Devi Dayal.
17. Who cheat the people in the name of Congress ? . The residents of Chotala and the Ministers of the Punjab.
18. Who takes illicit liquor ? . . . . Ganga Ram.
19. Who is the murderer of the poet ? . . . . Ganga Ram
20. The persons responsible for getting the tickets issued by  
duping Jawahar Lal ? The Ministers of the Punjab and Devi Lal.

Naujiwan Press, Hissar

Yours,  
(Sd.) Het Ram s/o Hira Lal,  
of village Dhanger, Tehsil, Fatehabad."

68 Mere perusal of Ex P A is sufficient to show that the poster is highly defamatory and assails the personal character of Ch Ganga Ram respondent No 5. The counsel for the (contesting) respondents, Shri Rajinder Sachar admits that items 1, 2, 3, 14 and 19 are defamatory. As regards the objection at the end of paragraph 15 of the written statement that the allegations in the poster Ex P A is against respondent No 5 and not the petitioner has also been given up by the contesting respondents' counsel.

69 In order that the petitioner should bring his case within the ambit of Section 123(5) of the Representation of the People Act, 1951, the following conditions must be fulfilled.—

1. There must be a statement of fact as opposed to expression of opinion.
2. That the statement of fact complained of must be false, and which the candidate or his agent either believes to be false or does not believe to be true.
3. The statement of fact must be in relation to the personal character and conduct of the candidate.
4. The statement must be reasonably calculated to prejudice the prospect of the candidate's election.

70. Mass of evidence has been led by both the parties with regard to this issue. It will be convenient to consider this issue under various sub heads as follows:—

- (A) Was Ex. P.A. got printed by or with the connivance of Shri Mani Ram respondent No. 2 or his agents?
- (B) Did Shri Mani Ram respondent or his agents distribute Ex. P.A. or read out in various villages of the constituency?
- (C) Did Shri Mani Ram respondent publish false statements concerning Shri Ganga Ram respondent No. 5 orally?
- (D) What is the legal effect of Printing Ex. P.A. by Sahi Ram polling agent of Shri Mani Ram respondent No. 2?
- (E) Did Balu Ram respondent No. 1 or his agent publish false statement regarding Ch. Ganga Ram respondent No. 5?
- (F) Whether the statement of Fact contained in Ex. P.A. is false in relation to the personal character or conduct of any candidate and is reasonably calculated to prejudice the prospects of a candidate's election?

#### Head A

71. The petitioner has examined Shri Sahi Ram (P.W. 46). He is the proprietor of the Naujiwan Press Hissar. He states that he is a member of the Socialist Party and in the last bye-election and the General election he canvassed for the Socialists. He admits that he was polling agent of Shri Mani Ram respondent at village Khairampur on 13th December 1953 and posters of the candidates of the Parja Socialist Party were got printed at his press at Hissar. He further states "The poster Ex. P.A. was printed at my press. I have not brought the manuscript copy of this poster, as I have lost it. This poster was got printed at my press by Het Ram and Swami Atma Nand. The manuscript of this poster was thumb marked by Het Ram. I made certain about it before I got it printed. Het Ram put his thumb impression on it in my presence on the manuscript. I had read the manuscript before I got it printed."

He further states that Swami Atma Nand paid the printing charges i.e. Rs. 5/- out of total amount of Rs. 10/-. He says that he keeps regular accounts of the press, but has not brought the same. When questioned by the Court he says that he does not keep any printed receipt books and if somebody insists on taking a receipt, he issues it on a plain paper and that he enters the payment on the order book. This witness was recalled by the Tribunal to elucidate certain matters and he appeared as C.W.I. He states that he does not keep any accounts of the money he receives and the order book, in which payments are entered, has been destroyed by him, because he generally destroys the books after the lapse of one year. He, however, admits that about 500 posters like Ex.P.A. were printed at his Press.

72. Het Ram (P.W. 24) was examined by the Tribunal. He states that he was asked to put his toe impression on a paper and he did so at the instance of Shri Mani Ram respondent No. 2. He states that he did not know about the contents of that paper. He admits that there is no other Het Ram son of Hira Lal in village Dhangar except himself. He helped no party in the bye-election. When the witness appeared before the Tribunal, the Tribunal found that both of his arms were amputated and that is why he had put his toe impression on the paper.

73. Shri Mani Ram respondent No. 2 does not state anything in his evidence with regard to paper on which he got the toe impression of Het Ram (P.W. 24).

74. The controversy ranges round the party position of Swami Atma Nand and Het Ram (P.W. 24). According to the petitioner Het Ram and Swami Atma Nand were canvassing for respondent No. 2 to his knowledge. Shri Mani Ram Bishnoi (P.W. 1) says that he saw Het Ram at village Dhangar canvassing for respondent No. 2 Shri Mani Ram, while Ram Partap (P.W. 3) saw Het Ram canvassing at Saddalpur. According to Ram Rikh (P.W. 7), Sohan Lal (P.W. 8), Asa Ram (P.W. 9) and Phusa Ram (P.W. 10) Swami Atma Nand was working for the Socialist Party at village Badopal. Ganpat (P.W. 12) deposed that he saw Swami Atma Nand addressing a meeting at village Dhani and Shri Mani Ram respondent also made a speech in that meeting. He is corroborated by Nanu Ram (P.W. 13) in this respect. On the other hand, mass of evidence has been led to show that Swami Atma Nand was seen with Shri Mani Ram Bishnoi (P.W. 1) and was supporter of the Congress Party. Shri Mani Ram



(P.W. 1) states that Swami Atma Nand was a Congress worker before 1951, but in that year he was turned out of that organization, as he opposed a Congress candidate. Consequently he was suspended by the Provincial Congress Committee and turned out by the High Command of the Congress.

75. From the conflicting evidence led on this point it cannot be conclusively established that Swami Atma Nand was agent of Shri Mani Ram respondent. The alleged payment of Rs. 5 made by him to Shri Sahi Ram, proprietor of the *Naugwan Press Hissar* (P.W. 46) cannot be said to have been made on account of respondent No. 2 Shri Mani Ram or with his connivance. It is doubtful whether he actually paid Rs. 5/- to the proprietor of the press. No account books have been produced to show that he made such a payment. Shri Sahi Ram (P.W. 46) is admittedly the worker of the Socialist Party and was polling agent of Shri Mani Ram respondent. From the non-production of account books and the original order book or the original manuscript the Tribunal is definitely of the opinion that he is withholding the truth. The Tribunal had to issue warrants of arrest against him several times. His demeanour in the witness box clearly gave the indication that he was not speaking the truth. In the opinion of the Tribunal he cannot be implicitly relied upon, when he states that Swami Atma Nand paid him Rs. 5/-. nor can any reliance be placed on his testimony, when he states that only 500 copies of the pamphlets Ex. P.A. were got printed at his press. In this connection it may be remarked that the accounts submitted by Shri Mani Ram respondent No. 2 show that on 22nd November 1953 he got 2,000 pamphlets printed at the rate of Rs. 6/- per thousand. It is inconceivable that Shri Sahi Ram (P.W. 46) charged Rs. 10/- for 500 posters. The Tribunal holds that the number of posters printed was much more than 500. Considering the unsatisfactory nature of the evidence on the record it cannot be definitely held that Ex. P.A. was got printed by Shri Mani Ram respondent or with his connivance so far as Swami Atma Nand and Het Ram are concerned. We cannot hold that either Het Ram or Swami Atma Nand was his agent in that respect. This concludes our finding under Head (A).

76. It may be remarked in passing that there are fairly strong circumstances to connect Shri Mani Ram respondent No. 2 with the printing of Ex. P.A. which are augmented by his false denial of knowledge regarding Ex. P.A. before the polling, yet it cannot be said to have been conclusively established that Ex. P.A. was printed at his instance.

#### Head (E) and (C)

77. The question for consideration is whether Shri Mani Ram respondent No. 2 or his agents distributed Ex. P.A. or read it out in various villages, where election meetings were held by the Socialist Party. The respondents strenuously denied these allegations and Shri Mani Ram respondent No. 2 says that he did not come to know of these posters before the polling day. When examined as R.W. 59 Shri Mani Ram respondent says, "I do not remember having seen the pamphlet like Ex. P.A. before the poll". The petitioner has led a large volume of evidence to prove this part of the issue. It will be convenient to deal with this issue village wise:—

#### *Badopal Village*

78. Shri Mani Ram Dishnoi (P.W. 1) deposed that 5/6 days before the polling Doctor Ram Manohar Lohia, Shri Mani Ram respondent No. 2 and others made speeches and in that meeting a poster Ex. P.A. was also read out and distributed in which certain allegations were made against Ch. Ganga Ram respondent. The poster was read out by Ch. Mani Ram respondent No. 2. He is corroborated in this respect by Ram Rikh P.W. 7 and Sohan Lal P.W. 8 Panch of village Panchavat. To rebut this evidence the respondent No. 2 has examined Manphul (R.W. 13), Chhailu Ram (R.W. 16), Shankar (R.W. 28), Kanshi Ram (R.W. 41), Doctor Ram Manohar Lohia (R.W. 60) and himself as R.W. 59. Manphul Singh (R.W. 13) states that a meeting was held at Badopal, which is at a distance of three miles from his village and was attended by 3,000 to 4,000 persons eight or ten days before the polling. He states, "I am not aware if any pamphlets were distributed in that meeting. I did not see or get any pamphlet there". He mentions that Ch. Ganga Ram respondent was present in the meeting. The evidence of this witness is of a negative character. The number of persons, who attended the meeting was about 4,000. It was very difficult for him to notice what transpired in that meeting. The witness belongs to Dhani China Mazra Biggar and does not belong to village Badopal, where the meeting was held. Chhailu Ram (R.W. 16) belongs to village Matana and not to Badopal. According to him the meeting took place 15/20 days

before the polling. There is sufficiently reliable evidence on record to show that the meeting was actually held five or seven days before the poll, while this witness Chhailu Ram says that it was about 15/20 days before the poll. This in itself should be sufficient to reject his testimony. Shankar (R.W. 28) also hails from another village Dhangar. He also states that he did not see the pamphlet like Ex.P.A. being distributed at Badopal. Similarly Kanshi Ram (R.W. 41) does not belong to Badopal. He belongs to village Dharnia. According to him the meeting took place 8/9 days before the poll.

79. Doctor Ram Manohar Lohia (R.W. 60) was examined by the respondent No. 2. He states that he went to Hissar in connection with bye-election of Shri Mani Ram Bagri respondent for two days and addressed 6, 7, 9 or 10 meetings in different villages. He cannot give the names of the villages, nor the dates on which he addressed the meetings. He states that he did not make any aspersions against the personal character of Ch. Ganga Ram respondent, who was one of the candidates. As regards the posters he states, "I do not recollect having heard a poster being read in these meetings attacking the personal character of Ch. Ganga Ram. I do not recollect any pamphlet being distributed in the meetings addressed by me." When asked by the Tribunal whether he could give the details of the speeches delivered by him or by Shri Mani Ram Bagri respondent he stated that he did not remember. On careful scrutiny of the evidence of Doctor Ram Manohar Lohia the Tribunal is of the opinion that Doctor Ram Manohar Lohia, as admitted by him, could not remember anything that happened about two years back. His evidence is quite vague and uncertain and cannot advance the case of respondent No. 2 any further. If Doctor Ram Manohar Lohia had stated definitely with regard to the distribution of the pamphlet or with regard to the speeches delivered by Shri Mani Ram Bagri the Tribunal would have assessed his evidence on a different footing, but as he himself is quite indefinite about everything, no definite conclusion can be drawn from his testimony. Moreover he himself drew inference from his own habit. For example he states, "It is incorrect that I in those meetings said something about the personal character of Ch. Ganga Ram respondent, who was one of those candidates. It is not my habit to do so. Had I done so, it would have been contrary to my habit and therefore would have remembered it."

79. The evidence led by the petitioner with regard to distribution of posters Ex. P.A. at village Badopal is quite reliable and trust worthy, while the evidence adduced by Shri Mani Ram respondent No. 2 is of negative character, vague and indefinite and cannot be relied upon.

80. There is a significant circumstance, which lends support to the story given out by petitioner's evidence. The position taken up by Shri Mani Ram respondent No. 2 is that he came to know about Ex. P.A. after the poll. When Shri Mani Ram Bishnoi P.W.1, who was one of the candidates for the Congress Ticket relating to the election of this Constituency was examined, a question was put to him by Shri Tilak Raj Bhasin, learned counsel for respondent No. 2 with regard to meeting at village Badopal, to which P.W.1 replies as follows:—

"It is incorrect that in that very meeting it was openly alleged against me that pamphlet Ex.P.A. was published at my instance and the other Bishnois and the allegations contained therein were absolutely baseless in order to malign the Congress candidate." It is well established that defence of a person complained against can be ascertained not only from his written statement but by the trend of cross-examination. In the above mentioned question a clear suggestion was made by the learned counsel for respondent No. 2, that in the meeting at Badopal a reference was made to Ex.P.A. and it was given out that the said poster Ex. P. A. was got published by Shri Mani Ram P.W.1 and other Bishnois. The position taken by Shri Mani Ram respondent No. 2 in his statement as R.W.59 becomes absolutely untenable, when he states that he did not come to know of this poster till the polling day. This piece of circumstantial evidence lends weight to the evidence adduced by the petitioner in this behalf. Under the circumstances the Tribunal is definitely of the opinion that posters like Ex.P.A. were distributed at village Badopal 5/6 days before the polling and were read out by Shri Mani Ram respondent No. 2.

#### *Bhangar Village*

81. Shri Mani Ram (P.W.1), Mani Ram (P.W.30), Shri Devi Dial (P.W.44) depose that Shri Mani Ram, respondent No. 2 distributed pamphlets like Ex.P.A. Shamker (R.W.28) of village Dhangar states that he did not see any pamphlet like Ex.P.A. being read or distributed at villages Badopal or Dhangar. The rebuttal is of usual negative character.

*Fatehabad Town*

82. Ch. Ganga Ram respondent (P.W.2) states that posters like Ex.P.A. were distributed at Fatehabad. The respondent No. 2 has examined Udmi Ram (R.W. 34) of Bhatoo Kalan, Amin Chand (R.W.42) of Khabra Kalan, Ramji Lal (R.W. 50) Municipal Commissioner of Sirsa to rebut the evidence of the petitioner. Evidence with regard to distribution of posters at Fatehabad is not conclusive.

*Sarwarpur village*

83. With regard to distribution of pamphlet Ex.P.A. and reading the contents of the same at this village, Shri Ganga Ram (P.W.2) and Bakhtawar Singh (P.W.14) had been examined by the petitioner. Bakhtawar Singh (P.W.14) says that Shri Mani Ram respondent No. 2 said in his speech that Ch. Ganga Ram respondent, harboured offenders, indulged in illicit distillation of liquor and was an instrument in passing bribes to the officials and was also a receiver of stolen property. He further states that Risal Singh belongs to the Socialist Party because he distributed the identity slips in the village two days before the polling. He further states that Risal Singh also distributed posters like Ex.P.A. In rebuttal the respondent No. 2 examined Shri Ganga Ram Lambardar of Khairati Khera (R.W. 1), Mukh Ram (R.W. 2) also of Khairati Khera, Kahni Ram (R.W. 5) of Sarwarpur and Uma Ram of Kukranwali (R.W.6). Their evidence cannot be relied upon. Bakhtawar Singh (P.W.14) is an independent and respectable witness. He is an ex-military man and also a Zamindar. The veracity of this witness has not been shaken in any way although he was cross-examined at length. Relying on the evidence of this witness and that of Ch. Ganga Ram (P.W.2) we hold that Shri Mani Ram Bagri got distributed pamphlets like Ex.P.A. through Risal Singh who was supporter of the Socialist Party and at the time of distribution Shri Mani Ram respondent No. 2 was present there.

84. We further hold that Shri Mani Ram respondent No. 2 made false and defamatory statements against Ch. Ganga Ram to the effect that he was harbouring offenders, indulged in illicit distillation of liquor, was broker of bribes to officials and was receiver of stolen property.

*Daryapur village*

85. Shri Ganga Ram (P.W.2), Moti Ram (P.W.6) and Mool Chand (P.W.15) deposed that Shri Mani Ram respondent No. 2 spoke against Shri Ganga Ram (P.W.2). Mool Chand (P.W.15) stated that one Kahna of Shaidanwali distributed posters in the presence of Shri Mani Ram Bagri, respondent No. 2 while Moti Ram (P.W.6) deposed that Shri Mani Ram Bagri respondent No. 2 and other persons distributed the posters and spoke against Ch. Ganga Ram respondent. This witness is Zamindar and owns about 70 bighas of land. On the other hand the respondent No. 2 has examined a solitary witness Shri Ram Parkash, Pleader Sirsa (R.W.49). He states that he did not see any pamphlet like Ex.P.A. being distributed at the polling station. In his cross-examination he admits that he is a member and worker of the Socialist Party. This witness was not a voter in Fatehabad Constituency. One fails to understand why this witness went to the polling station. He seems to be an interested witness and cannot be implicitly relied upon.

86. From the scrutiny of evidence with regard to distribution of Ex.P.A. and publication of false statements at Daryapur, we hold that this part of the issue has been proved against respondent No. 2.

*Saddalpur village*

87. To prove the distribution of pamphlets like Ex.P.A. and making of false statements by respondent No. 2, the petitioner has examined Ram Partap (P.W. 3), Rati Ram (P.W.4), and Thakar (P.W.5). These witnesses belong to village Saddalpur. Shri Ram Partap (P.W.3) is a respondent in this petition. Rati Ram (P.W.4) is a Sarpanch of the village Panchayat, while Thakar (P.W.5) is a member of the village Panchayat. According to their evidence it is clear that four, five days before the polling there was a meeting in Saddalpur in which posters like Ex.P.A. were distributed by Shri Mani Ram respondent No. 2 and his supporters and they were read by them. The respondent No. 2 has not produced any witness either from Saddalpur or from any other village to rebut this evidence. The evidence on this point consists of respectable persons. Their veracity has not been impeached in any manner. The inescapable conclusion is that respondent No. 2 read out and distributed Ex.P.A. at Saddalpur.

*Dhabbi village*

88. Ganpat (P.W.12) and Nanhu Ram (P.W.13) depose about the distribution of posters Ex.P.A. at village Dhabbi. Both these witnesses belong to this very village. They stated that respondent No. 2 read out the poster and attacked the personal character of Ch. Ganga Ram respondent by saying that he was carrying on illicit distillation and was a receiver of stolen property, was a drunkard old man and was a black marketeer of paddy. No evidence in rebuttal has been produced by the respondent in this behalf.

*Bhodia Khara Pachadgan*

89. Surta Ram (P.W.16) states that Shri Mani Ram respondent No. 2 addressed the meeting held five or six days before the polling at this village and Shri Mani Ram respondent No. 2 stated therein that Ch. Ganga Ram respondent indulged in illicit distillation, harbouring offenders and in black marketing of rice. He further states that he (Shri Mani Ram respondent No. 2) read out the poster and such posters were distributed in that meeting. In cross-examination he states that he is not a Congress-man and owns about 150 bighas of land. His veracity has not been challenged in any way. He is corroborated by Siri Chand (P.W.17) and Mani Ram (P.W.21). The respondent No. 2 has examined Lal Chand (R.W.7), Dhanna Ram (R.W.8) and Siri Ram (R.W.12) residents of Bhodia Khara. We have carefully gone through the evidence of these witnesses and find that their evidence cannot be relied upon being of negative character.

*Jakhal town*

90. The petitioner examined one Banarsi Dass (P.W.22). He states that he distributed the pamphlets on behalf of the Socialist Party. The evidence of this witness cannot be relied as he himself is an accomplice and there is absolutely no corroboration of his testimony.

*Tohana Town*

91. With regard to this town the petitioner has examined Ram Bhagat (P.W.31) and Jawahar Lal (P.W.32), both of whom belong to Tohana. On the other hand the respondent examined Lakhmi Das (R.W.22), Balwant Singh (R.W.23), Sikander Lal (R.W.24) and Dr. Nand Kishore (R.W.25). According to Ram Bhagat (P.W.31) the pamphlets like Ex.P.A. were distributed by Doctor Nand Kishore (R.W.25). Doctor Nand Kishore denies this fact. Shri Balwant Singh (R.W.23) is a Municipal Commissioner. He states that he is not aware of any pamphlets being distributed against Ch. Ganga Ram respondent. He is corroborated by Sikandar Lal (R.W.24) and Lakhmi Dass (R.W.22). Thus Sikandar Lal is a polling agent of Shri Mani Ram respondent No. 2. Similarly Doctor Nand Kishore admits that he is a worker of the Socialist Party and a Secretary of the Socialist Party at Tohana. No independent witness has been examined by the respondent in this behalf. The evidence of witnesses examined by the respondent is of a negative character.

92. From the foregoing discussion and after careful scrutiny of the whole evidence on the record the Tribunal is definitely of the opinion that Shri Mani Ram Bagri respondent No. 2 accompanied by some of his agents and workers distributed Ex.P.A. in villages Badopal, Dhangar, Sarwarpur, Sadalpur, Darva-pur, Dhabbi and Tohana and he read out the same poster in the meetings convened at those places for the purpose and he made false and defamatory statements against Ch. Ganga Ram respondent there.

**Head D**

93. It is conclusively proved on the record that Shri Sahi Ram (P.W.46) was polling agent of Shri Mani Ram Bagri respondent. He admits that he canvassed for him in the villages. He further admits that Het Ram brought the manuscript of the poster Ex. P.A. which he read out to him (Het Ram) and got his toe impression on the manuscript. He admits having printed Ex.P.A. The only point for consideration is whether it amounts to publication of false statement by an agent of respondent No. 2. As regards the agency there is absolutely no doubt that he was agent of respondent, because he admits having canvassed for him and acted as his polling agent.

94. The learned counsel for the respondents vehemently argues that a proprietor or a keeper of a press is not deprived of his right under the law to forbear from printing a poster containing false and defamatory statements concerning the personal character of another candidate. He further submits that Shri Sahi Ram P.W. may be liable under the Criminal Law for printing such a

pamphlet, but his act in printing this poster does not in any way affect the candidate, whose agent he was. As against this the learned counsel for the petitioner submits that whenever a proprietor of the press becomes the agent of a candidate he incurs double liability. He cannot publish any poster either from his own press or from the press of any other person containing false statements concerning the personal character of another candidate. Section 123(5) of the Representation of People Act is quite explicit on this point. According to this section publication by a candidate or his agent or by any other person with the connivance of candidate or his agent, of any statement of fact, which is false, constitutes a corrupt practice. Shri Rajinder Sacher the learned counsel for the respondent contends that printing of a poster does not amount to publication. We cannot subscribe to this proposition. In this case we find that Shri Sahi Ram P.W. read out the poster to Het Ram and Swami Atma Nand and then got it printed. The printing of a poster by an agent, which is subsequently distributed in the constituency and read out in several meetings constitutes sufficient publication. In the process of printing the poster must have gone to the compositor, proof reader and printer. This in itself constitutes publication.

95. Under the circumstances we hold that Shri Sahi Ram P.W. 46 as agent of Shri Mani Ram respondent No. 2 published a false statement as defined in Section 123(5) of the Representation of People Act, 1951.

#### Head E

96. As against Shri Balu Ram respondent No. 1 there is no reliable evidence on the record to show that either he distributed or read out or repeated the contents of Ex.-P.A. in any meeting or at any place in the constituency. We hold that Shri Balu Ram respondent is not guilty of the corrupt practice of publishing false statements as defined in Section 123(5) of the Representation of People Act.

#### Head F

97. The respondent No. 2 does not plead that the contents of Ex.P.A. are true. He totally disassociates himself from the allegations contained in Ex.P.A. As R.W.59 Shri Mani Ram respondent No. 2 states that he had respect for Ch. Ganga Ram respondent, for his old age and that he has absolutely no concern with the pamphlet Ex.P.A. Ch. Ganga Ram, who is a respondent in this case states on oath as P.W.2 as follows:—

"I have been continuously elected member of the District Board Hissar, since 1929. I am also President of the Marketing Committee at Sirsa. I was a Zaildar till this post was abolished. This poster was against me. It is incorrect that I was ever prosecuted for giving protection to the outlaws. On the other hand, I had always been helping the Administration. It is also incorrect that I was involved for stealing the canal water, nor was I ever used as an instrument for passing bribes. I myself did not shoot, although one has to obtain a shooting licence at the time of the renewal of the gun licence. It is also incorrect that I take liquor, nor is it true that I was ever involved for possessing illicit liquor. The poster Ex.P.A. has been read out to me. The allegations made in this poster against me are entirely baseless."

This statement of fact has not been challenged in the cross examination of this witness. No suggestion about his moral character has been made either in the written statement or in the cross examination of this witness or by production of any independent witness or any documentary evidence on this point. The only conclusion that can be drawn is that Shri Ganga Ram respondent, who had been returned in the General Election as Member Legislative Assembly Punjab bears good moral character. The allegations contained in Ex.P.A. are false and defamatory. Mr. Rajinder Sacher counsel for respondents states that items Nos. 1, 2, 3, 14 and 19 are highly defamatory. These items with advantage may be repeated as under:—

1. Who causes breaches in the canal? Ganga Ram.
2. Who harbours the Goondas of the Tehsil? Ganga Ram.
3. Who is a Rishwat Dalal? Ganga Ram.
14. Who smuggles out paddy? Ganga Ram.
19. Who takes illicit liquor? Ganga Ram.

98. Both Shri Mani Ram and Shri Ganga Ram respondents had been contesting elections of the Punjab Legislative Assembly for a long time. The statement of fact contained in Ex.-P.A. are such that Shri Mani Ram respondent No. 2 must have known that it was false and which he either believes to be false or does not believe

to be true. It is quite apparent that the statement is in relation with the personal character of Shri Ganga Ram respondent who was a Candidate. Such false statements, if published, and read out in several meetings would reasonably prejudice the prospect of candidate's election. This aspect of the matter was not seriously challenged by the respondents.

99. Considering all the relevant evidence on the record the Tribunal holds that Shri Mani Ram respondent No. 2 is guilty of the corrupt practice of publication of the false statements contained in Ex.-P.A. on the ground that he read out these allegations in several meetings and gave the purport of Ex.-P.A. orally during his election campaign and lastly caused his agent Sahi Ram P.W.46 to publish the same. There is ample evidence on the record to hold that Shri Mani Ram Bagri respondent is guilty of corrupt practice as defined in Section 123(5) of the Representation of People Act.

100. In the result we find that Shri Mani Ram respondent No. 2 is guilty of the corrupt practice mentioned in Section 123(8) of the Representation of People Act in so far as he secured the assistance of Shri Daryao Singh Lambardar (P.W.23) for the furtherance of the prospect of his election. We further hold that Shri Mani Ram respondent No. 2 is guilty of the corrupt practice as defined in Section 123(5) of the Representation of People Act in so far as he read out the contents of Ex.P.A distributed it and repeated the contents of the same orally in several villages in the constituency.

101. We further hold that Shri Balu Ram respondent No. 1 was not below the age of 25 years on 4th November 1953, the relevant date when the nomination papers were filed and thus he was not disqualified to stand for election. Further Shri Balu Ram respondent has not been found guilty of any corrupt practice.

102. The result is that the election petition fails so far as Shri Balu Ram respondent No. 1 is concerned.

103. The election of Shri Mani Ram respondent No. 2 returned candidate is void, as he has been found guilty of the corrupt practice specified in Section 123(5) and (8) of the Representation of People Act.

104. The petitioner succeeds only on two issues. The respondents had to examine number of witnesses with regard to other issues. Under the circumstances we leave the parties to bear their own costs.

Announced.

(Sd.) J. S. BEDI, *Chairman.*

(Sd.) D. R. PREM, *Member.*

(Sd.) SANSAR CHAND BHANDARI, *Member.*

The 16th January, 1956.

#### ANNEXURE A

(referred to in para 13 on page 6 of judgment)

#### ORDER

Dalbir Singh petitioner has filed an Election Petition against Shri Balu Ram and five other respondents before the Election Commission Delhi on 23rd March 1954. It was referred to this Tribunal consisting of Tikka Jagjit Singh Bedi Chairman, Shri Sansar Chand Bhandari and Shri Daulat Ram Prem Members. Notices were issued to the respondents, who were duly served.

The contesting respondent Balu Ram raised certain objections under section 83(3) of the Representation of the People Act of 1951, for ordering the petitioner to furnish further and better particulars in respect of the allegations made in his Election Petition. Dalbir Singh petitioner has filed his reply to that application on 3rd August 1954. Due notice of that reply was given to the respondent. Today was fixed for hearing the arguments on these objections. Mr Bhasin counsel for the respondents for the reasons given earlier by the Tribunal was unable to attend the court today, as he was said to be busy in the Supreme Court. He has, however, sent his arguments in writing which were placed before us by Shri Jagan Nath Vaid Advocate. The petitioner and his replication mentioned above state, that, whatever particulars he could supply he has already given those in the petition itself. The statement of the counsel of the petitioner was recorded by the Tribunal to the same effect.

We have gone through the objections of the respondents and the reply given by the petitioner and find as under:—

In the particulars given in List 'A' relating to the Corrupt Practice of undue influence under para 13 of the Election Petition, the petitioner has not given the names of the supporters, who exercised influence. Since he pleads his inability to do so, he would not be allowed to improve his case later on.

There is nothing vague in List 'B', which relates to the corrupt practice of false personation.

There appears to be no vagueness in List 'C'.

Regarding list 'D' relating to hiring and procuring of unauthorised conveyances the particulars supplied by the petitioner are vague, so far registration numbers of the trucks and jeeps are concerned, which are alleged to have been used for conveying the voters to the polling booth. The petitioner is, however, directed to place on the file the registered numbers of the jeeps, trucks and tractors by tomorrow.

There is nothing vague in list 'E'. It is not necessary to give the names of the persons, who were canvassed, because under Section 83 of the Representation of the People Act, 1951 only the names of the persons, who have committed corrupt or illegal practices, have to be given.

List 'F' pertaining to incurring of unauthorised expenditure.

Item (a). The petitioner has alleged that the returned candidate has spent huge amounts for the purpose of carrying voters in the vehicles as mentioned in List 'D'. The petitioner has not given any indication of even an approximate amount. This is very vague. It shall be deemed to be struck off.

Item No. 2. No objection has been filed with regard to this item.

Item No. 3. The objection of the respondent is that no indication is furnished as to how much expenditure in excess of the maximum limit prescribed did the respondent incur. As the maximum limit of expenditure is prescribed by law and is known to every body, no further particulars are required on this item.

List 'G'. The plea of the petitioner that the paras given in List 'G' do not relate to any corrupt practice by themselves is untenable under law *vide* Section 124(4) read with Section 83 of the Representation of the People Act, 1951. The petitioner will be allowed to lead evidence with regard to the items of which he was given the full particulars.

List 'H'. There is nothing vague in it.  
Announced.

30-8-54.

(Sd.) J. S. BEDI, *Chairman*.

(Sd.) D. R. PREM, *Member*.

(Sd.) SANSAR CHAND, *Member*.

[No. 82/5/54/2170.]

By order,

P. S. SUBRAMANIAN, *Secy.*

The 30th August, 1954.

